

1 A Getting visibility at the client
2 to have them review what they had done with us
3 in prior years, and determine if it was what
4 they were going to follow through with on a
5 renewal.

6 Q What does "significant dollars"
7 mean?

8 A Significant dollars means any
9 dollars that a client invests are significant
10 to me, so what I'm trying to do is make sure
11 that we're categorizing the dollars
12 appropriately.

13 Q Significant dollars, in fact,
14 means you were trying to increase the amount
15 of money you were getting from [REDACTED]
16 doesn't it?

17 A Not, necessarily. It may have
18 been that we were adding additional elements
19 into what they had asked us for, and those in
20 total added up to different dollars than
21 previously. [REDACTED]

22 [REDACTED]

1 [REDACTED] and a few other
2 different products that they would buy from
3 us. And that had changed over the years.

4 Q Isn't it right that at this time,
5 June 5th, 2007, you were pushing [REDACTED] to
6 increase the dollar amount significantly of
7 its commitment to NFL Network?

8 A I don't know if I can answer that
9 yes or no, without looking at the difference
10 in the billing from the 2006 commitment, to
11 the 2007 commitment, which was done after this
12 email was written.

13 Q Do you believe it's possible that,
14 in fact, you were pushing [REDACTED] to increase
15 the size of their commitment?

16 A Yes.

17 MR. PEREZ-MARQUES: Your Honor, I
18 would move that 508 be moved into evidence.

19 JUDGE SIPPEL: Any objection?

20 MR. SCHMIDT: No objection, Your
21 Honor.

22 JUDGE SIPPEL: Okay. Then Comcast

1 508 for identification is received in evidence
2 as 508.

3 (WHEREUPON, THE DOCUMENT REFERRED
4 TO, PREVIOUSLY MARKED COMCAST
5 EXHIBIT NO. 508 FOR
6 IDENTIFICATION, WAS RECEIVED IN
7 EVIDENCE.)

8 MR. PEREZ-MARQUES: Your Honor,
9 I'd like to mark 509 for identification.

10 JUDGE SIPPEL: Let me identify it
11 for the record, and we'll get it marked. This
12 is a -- this, again, is a multi-page email, I
13 guess. What would you call this, a slide
14 presentation, or something?

15 MR. PEREZ-MARQUES: This is an
16 email with an attachment, Your Honor.

17 JUDGE SIPPEL: The attachment
18 being? How would you characterize it?

19 MR. PEREZ-MARQUES: Yes. The
20 attachment is a presentation, Your Honor.

21 JUDGE SIPPEL: Okay. This is from
22 [REDACTED] to Mr. Furman. Do I have that

1 right, have it in the right order?

2 MR. PEREZ-MARQUES: Correct.

3 JUDGE SIPPEL: From [REDACTED] to
4 Mr. Furman dated June 5, 2007, concerning
5 what? Brand -- well, it's attaching a brand
6 positioning whatever. And it's marked for
7 identification.

8 (WHEREUPON, THE DOCUMENT REFERRED
9 TO WAS MARKED AS COMCAST EXHIBIT
10 509 FOR IDENTIFICATION.)

11 MR. PEREZ-MARQUES: Thank you,
12 Your Honor.

13 JUDGE SIPPEL: Comcast 509.

14 BY MR. PEREZ-MARQUES:

15 Q Mr. Furman, do you recognize this
16 as an email from [REDACTED] at [REDACTED] to
17 yourself dated June 5th, 2007?

18 A I do.

19 Q And you see that that is the same
20 date as the Exhibit 508, which we were just
21 looking at, between you and Ms. Williams?

22 A Yes.

1 Q In fact, it's only about an hour
2 apart.

3 A Yes.

4 Q In the previous email, we saw that
5 you had said you were pushing for renewal at
6 significant dollars. Well, before I go there.

7 MR. PEREZ-MARQUES: Your Honor, I
8 move that this be admitted into evidence.

9 JUDGE SIPPEL: Any objection?

10 MR. SCHMIDT: No objection, Your
11 Honor.

12 BY MR. PEREZ-MARQUES:

13 Q Who is [REDACTED] -

14 JUDGE SIPPEL: Wait a minute.
15 Wait a minute.

16 MR. PEREZ-MARQUES: I'm sorry,
17 Your Honor.

18 JUDGE SIPPEL: Comcast 509 for
19 identification is received in evidence as
20 Comcast 509.

21 (WHEREUPON, THE DOCUMENT REFERRED
22 TO, PREVIOUSLY MARKED COMCAST

1 EXHIBIT NO. 509 FOR
2 IDENTIFICATION, WAS RECEIVED IN
3 EVIDENCE.)

4 JUDGE SIPPEL: Go ahead, sir.

5 BY MR. PEREZ-MARQUES:

6 Q Who is [REDACTED] Mr.
7 Furman?

8 A She is the media buyer at [REDACTED]
9 Corporation.

10 Q She's an employee of [REDACTED] not
11 an external media buyer?

12 A Correct.

13 Q And in this email, she's referring
14 to a visit, that you had stopped in to see
15 her, in the first line?

16 A Yes.

17 Q And in the second to last
18 substantive paragraph before "Best regards",
19 there's a paragraph that begins, "We certainly
20 value". Do you see that paragraph, "We
21 certainly value our partnership"?

22 A Yes.

1 Q The second sentence of that you'll
2 see says, "I'm sure you understand that with
3 little growth in your distribution, and our
4 current business situation, it will be
5 extremely difficult to justify a [REDACTED]
6 out-of-pocket increase with the NFL Network
7 properties, as currently proposed." Did I
8 read that correctly?

9 A Yes.

10 Q Now, she refers there to little
11 growth in your distribution. Correct?

12 A Yes.

13 Q Now, at this time, the NFL Network
14 was actually out in the market trying to
15 improve its distribution, was it not?

16 A I don't know.

17 Q You don't know one way or the
18 other whether the NFL Network was trying to be
19 more broadly distributed?

20 A I assume that our folks in
21 affiliate distribution were working on that,
22 but I was not involved in those efforts.

1 Q And, at this time, you see that
2 [REDACTED] also refers to the current
3 business situation at [REDACTED] Is that
4 correct?

5 A Correct.

6 Q In fact, you had referred to that
7 same business situation as "internal turmoil"
8 in Exhibit 508, had you not?

9 A Correct.

10 Q And then she refers to saying,
11 "It's extremely difficult to justify a 90
12 percent out-of-pocket increase." Does that
13 refresh your recollection that, in fact, you
14 were pushing [REDACTED] to significantly increase
15 the amount of its advertising commitment to
16 the NFL Network?

17 A Taken out of context, those lines
18 don't describe what this fully represents.
19 This is a standard bit of negotiating from the
20 agency, making sure that as we get into the
21 second year, [REDACTED] was our sponsor first in
22 2006, and we were talking about exploring

1 renewals in 2007. We were adding additional
2 properties to the packages. We were learning
3 how to use different assets differently. And,
4 to that end, the attached piece by [REDACTED]
5 [REDACTED] was to make sure that we understood
6 what the brand essence was for [REDACTED] and we
7 could then design things that made sense,
8 similar to her comment about using [REDACTED]
9 [REDACTED] to do some
10 [REDACTED] commercials for them. That was very
11 important to them, as they decided to work
12 through that.

13 Within any negotiation with any
14 client, we always position for a much larger
15 investment in the efforts of knowing that we
16 can build for them things that will be
17 responsive for their brand. It's no different
18 than any other network that competes for
19 advertising dollars. So, in that regard, we
20 were following what you see in the business
21 all the time, and this was her first response
22 back to us in reviewing what we had given to

1 her, which, I assume, was that day, and I'd
2 have to make sure that I have the dates lined
3 up on my travel schedule.

4 Q Now, the net effect, the bottom
5 line effect of this new proposal that NFL
6 Network was advancing would have been a [REDACTED]
7 [REDACTED] increase to the out-of-pocket cost to
8 [REDACTED] Isn't that right?

9 A I don't know if I was able to
10 check that increase and confirm that, or not.

11 Q That's what [REDACTED] is
12 saying, isn't she?

13 A That's what her position was, yes.

14 Q Now, you don't blame Comcast for
15 the internal business situation at [REDACTED] do
16 you?

17 A No.

18 Q Budget constraints at advertisers
19 are another reason that the NFL Network can
20 suffer advertising problems. Isn't that
21 right?

22 A Yes.

1 Q One of the other examples you
2 raise in your written testimony is the
3 example, [REDACTED] Correct?

4 A Yes.

5 Q The electronics retailer?

6 A Yes.

7 Q Now, are you aware that [REDACTED]
8 in fact, had dramatically cut its budgets for
9 advertising in July 2007?

10 A No, I was not aware of that.

11 Q All right. Did you review that,
12 or consider it before submitting this
13 testimony and mentioning [REDACTED]

14 A No.

15 Q You didn't consider other factors
16 that might have led for them to cut their
17 advertising?

18 A I didn't consider that relative to
19 my testimony.

20 MR. PEREZ-MARQUES: Your Honor,
21 I'd like to mark for identification Comcast
22 Exhibit 528.

1 JUDGE SIPPET: Very well. You may
2 show it to the witness.

3 THE WITNESS: Thank you, Your
4 Honor.

5 THE WITNESS: Thank you.

6 JUDGE SIPPET: Thank you. Comcast
7 528 is a -- looks like an email from Michael
8 Brown of the League office, to Tim Allen, with
9 copies to Worzel, Kerry, et cetera, regarding
10 [REDACTED] revised proposal request dated July
11 16th, 2007. That document is now identified as
12 Comcast Exhibit 528 for identification.

13 (WHEREUPON, THE DOCUMENT REFERRED
14 TO WAS MARKED AS COMCAST EXHIBIT
15 528 FOR IDENTIFICATION.)

16 BY MR. PEREZ-MARQUES:

17 Q Mr. Furman, who is Michael Brown?

18 A A gentleman that works for us in
19 the Media Group.

20 Q In the Media Group at National
21 Football League?

22 A At the NFL Network, and NFL.com.

1 Q Okay. And who is Tim Allen?

2 A Tim Allen was, at the time, our
3 sales representative in Chicago.

4 Q And who is David Pattillo?

5 A David Pattillo is Vice President
6 and Sales Manager for the NFL Media Group.

7 Q These are people within your
8 organization?

9 A Yes.

10 Q And you see that at the bottom of
11 the first page, there is an email from David
12 Pattillo to Peter Butchen and Tim Allen, dated
13 July 16, 2007. Do you see where I'm reading?

14 A Yes.

15 Q And he writes to Mr. Butchen, the
16 subject line is, [REDACTED] Revised Proposal
17 Request." Do you see that, Mr. Furman?

18 A Yes.

19 Q And Mr. Pattillo writes, "Budgets
20 are down, and already stretched their [REDACTED]
21 sponsorship from '06." Do you see where I'm
22 reading?

1 A Yes.

2 Q Were you aware that [REDACTED]
3 budgets were down?

4 A I was not.

5 MR. SCHMIDT: Your Honor?

6 JUDGE SIPPEL: Yes, sir.

7 MR. SCHMIDT: We want to enter an
8 objection to this line of questions as double
9 hearsay.

10 JUDGE SIPPEL: I'm sorry. I can't
11 hear you. What was -- the objection is what?

12 MR. SCHMIDT: Double hearsay.

13 JUDGE SIPPEL: Double hearsay.

14 MR. SCHMIDT: This isn't his
15 document, which may be cured as a business
16 record, but then it's referring to a
17 conversation.

18 MR. PEREZ-MARQUES: Your Honor,
19 Mr. Furman's entire testimony is based on the
20 double hearsay, what he heard from media
21 buyers transmitting information from
22 advertisers. If we're going to allow

1 objections on that basis, the bulk of his
2 testimony should be stricken.

3 JUDGE SIPPEL: Well, there's no
4 questioning of the reliability of this
5 evidence, is there? I mean, it is what it is.

6 MR. SCHMIDT: We don't have Mr.
7 Pattillo here, and he's never asked to be
8 deposed by the other side to find out what
9 he's referring to.

10 JUDGE SIPPEL: Well, if they had
11 asked for that, I'm sure you would have been
12 in here complaining because it's going to take
13 up too much time. I'm going to overrule the
14 objection. I know we're being -- technically,
15 you're correct, but these are business
16 records, and nobody's questioning the
17 reliability of the document. So, for whatever
18 it's worth, I'm going to permit it to go
19 forward as a cross examination exhibit. I
20 want you to move it in right now.

21 MR. PEREZ-MARQUES: Yes, Your
22 Honor. I'd like to move it into evidence,

1 528.

2 JUDGE SIPPEL: Do you have an
3 objection to it?

4 MR. SCHMIDT: Just the one I've
5 stated, Your Honor.

6 JUDGE SIPPEL: Thank you, sir.
7 Okay. I'm overruling the objection, receiving
8 it into evidence.

9 (WHEREUPON, THE DOCUMENT REFERRED
10 TO, PREVIOUSLY MARKED COMCAST
11 EXHIBIT NO. 528 FOR
12 IDENTIFICATION, WAS RECEIVED IN
13 EVIDENCE.)

14 JUDGE SIPPEL: You may go ahead.

15 BY MR. PEREZ-MARQUES:

16 Q Mr. Furman, I believe you
17 testified that you were not aware that budgets
18 were down at [REDACTED] is that correct?

19 A Correct.

20 Q Does Mr. Pattillo have any special
21 responsibility for [REDACTED] as an accountant?

22 A It falls out of the Chicago

1 office, which at that time he would have had
2 responsibility for.

3 Q So [REDACTED] was one of his
4 customers.

5 A The agency responsible for [REDACTED]
6 [REDACTED] business was his customer.

7 Q The [REDACTED] account was within
8 his responsibility?

9 A Yes.

10 Q And in this e-mail, he is pointing
11 out that [REDACTED] budgets are down, correct?

12 A Correct.

13 Q And now Tim Allen responds in the
14 e-mail above that. What is Tim Allen's
15 responsibility with respect to [REDACTED]

16 A He was the sales executive for the
17 NFL Network and NFL.doc in Chicago.

18 Q And so he also had particular
19 responsibility for [REDACTED]

20 A Yes.

21 Q And he writes back, "Not an ideal
22 with [REDACTED] -- not an ideal situation with

1 [REDACTED] overall in the marketplace. I am
2 hearing that broadcast and cable entertainment
3 nets were hit hard. Many got shut out after
4 large budgets in 2006." Do you see that, Mr.
5 Furman?

6 A I see that.

7 Q And what Mr. Allen is saying is,
8 as a person responsible for the [REDACTED]
9 account, that [REDACTED] is cutting advertising
10 generally in the marketplace, isn't that
11 right?

12 A That is Mr. Allen's comments here.

13 Q And Mr. Allen, as you just
14 testified, had particular responsibility for
15 [REDACTED] is that right?

16 A Yes.

17 Q Did you confer with Mr. Allen
18 before putting [REDACTED] in your written direct
19 testimony?

20 A No, I did not.

21 Q Were you aware that broadcast and
22 cable entertainment networks were also

1 suffering from advertising losses from [REDACTED]

2 [REDACTED]

3 A Mr. Allen quotes that. That is
4 not something that I am aware of.

5 Q You can put that to one side, Mr.
6 Furman.

7 Now, you don't blame Comcast for
8 [REDACTED] reducing its advertising budget, do
9 you?

10 A No.

11 Q That has nothing to do with
12 Comcast at all.

13 A The advertising budget, no.

14 Q And so if Comcast -- if NFL
15 Network lost advertising dollars because of
16 budget constraints at [REDACTED] that would
17 have nothing to do with Comcast.

18 A Not budget concerns.

19 Q Do you recall a time when [REDACTED]
20 recently turned down ads on NFL Network
21 specifically citing their high price?

22 A I do not.

1 Q Did you check with Mr. Allen or
2 Mr. Pattillo or anyone in the Chicago office
3 who is actually responsible for [REDACTED] about
4 whether [REDACTED] had been complaining not
5 about distribution but in fact about the price
6 of your advertising?

7 A I did.

8 Q You did check whether they had
9 complained about the cost.

10 A Under a general conversation with
11 our Chicago office, I discussed [REDACTED]
12 positioning with us and what we were doing to
13 try to grow their business and what their
14 responses would have been.

15 Q And during that conversation, you
16 did not become aware that [REDACTED] had
17 complained about the price of NFL Network
18 advertising spots.

19 A I don't remember that.

20 MR. PEREZ-MARQUES: Okay. Your
21 Honor, if I can, I would like to mark Comcast
22 Exhibit 527.

1 JUDGE SIPPEL: Well, before you go
2 there, you have asked him questions on the
3 first page of 528. You have asked him nothing
4 on the pages beyond that, am I correct?

5 MR. PEREZ-MARQUES: That is
6 correct, Your Honor.

7 JUDGE SIPPEL: Well, then, why
8 don't we just tear off the first page and make
9 that the exhibit? There is no sense of
10 putting the other materials in the record that
11 haven't been used.

12 MR. PEREZ-MARQUES: Your Honor,
13 that is fine with me, if the NFL has no
14 objection.

15 JUDGE SIPPEL: It could help NFL.

16 MR. SCHMIDT: Yes, we have no
17 objection to that practice, Your Honor.

18 JUDGE SIPPEL: All right. We are
19 going to just tear the first page off, the
20 first page, and it will be a one-page exhibit,
21 which is Exhibit 528.

22 MR. PEREZ-MARQUES: Your Honor, if

1 I may, I apologize, but if I -- the second
2 page of the e-mail is actually a continuation
3 of the same document. It is part of the same
4 e-mail chain, so I would ask that those two be
5 put together.

6 JUDGE SIPPEL: Well, it doesn't
7 really add -- he hasn't been asked questions
8 on it, and it really doesn't add anything. I
9 mean, your point is -- I think you have
10 established your point in terms of the [REDACTED]
11 [REDACTED] account, and that they are having -- the
12 budgets are down. That is really all you are
13 trying to establish, isn't it?

14 MR. PEREZ-MARQUES: That is
15 correct, Your Honor. On the second page,
16 however, it refers to the increase in pricing
17 from year to year on the [REDACTED] ads.

18 JUDGE SIPPEL: Well, he hasn't
19 testified to that.

20 MR. PEREZ-MARQUES: No, that's
21 fine, Your Honor. We have no objection.

22 JUDGE SIPPEL: One page, okay.

1 That's fine. Thank you.

2 Now, you have another document.

3 MR. PEREZ-MARQUES: I do. Comcast
4 Exhibit 527 for identification, Your Honor.

5 JUDGE SIPPEL: Okay. Would you
6 bring it up, please, to the witness, etcetera.
7 Thank you.

8 MR. PEREZ-MARQUES: And on this
9 document also my questions will relate only to
10 the cover e-mail.

11 JUDGE SIPPEL: Well, then, why
12 don't we just -- can I just tear that off and
13 just work with the cover?

14 MR. PEREZ-MARQUES: That is fine,
15 Your Honor. We have no objection to that.

16 JUDGE SIPPEL: This will be marked
17 for identification. It is a -- it is from Tim
18 Allen, sent to Dolores Bellina, etcetera -- I
19 will let you explain -- and it regards "[REDACTED]
20 [REDACTED] Need Another Revision." It is identified
21 Comcast Exhibit 527 for identification.

22 (Whereupon, the above-referred to

1 document was marked as Comcast
2 Exhibit No. 527 for
3 identification.)

4 BY MR. PEREZ-MARQUES:

5 Q Mr. Furman, you have already
6 explained who Tim Allen is. Who is Dolores
7 Bellina?

8 A She works for the NFL Media Group.

9 Q In the Chicago office as well?

10 A No. New York.

11 Q And Peter Butchen?

12 A NFL Media Group in New York.

13 Q And you see that this is an e-mail
14 sent from Mr. Allen to Ms. Bellina and Michael
15 Brown on September 11, 2007, correct?

16 A Correct.

17 Q It is the subject line [REDACTED]
18 Need Another Revision," do you see that?

19 A I do.

20 Q The first line of this e-mail
21 says, "[REDACTED] has chosen not to move forward
22 with the pre-kick units due to high CPM." Do

1 you see where I am reading?

2 A I do.

3 Q What are pre-kick units? They are
4 advertising spots, aren't they?

5 A They are. This e-mail
6 conversation is one that is had hundreds of
7 times over in negotiations for all networks
8 and television advertising. It is the
9 advertisers and the networks determining what
10 the best mix and match of programming is that
11 they can buy.

12 Advertisers generally strive to
13 get the highest-rated program, which generally
14 carries a higher value for it, and it is about
15 how you blend them together. And this e-mail
16 takes us through one of those conversations.

17 Q Mr. Furman, my question was
18 whether "pre-kick units" refer to advertising
19 spots.

20 A Yes, they do.

21 Q And "CPM" refers to the price of
22 those advertising spots, does it not?

1 A Yes.

2 Q In this e-mail, Mr. Allen, who as
3 we established was responsible for the [REDACTED]
4 [REDACTED] account, is saying that [REDACTED] has
5 chosen not to buy those advertising spots
6 because of the high price, is he not?

7 A Not to buy pre-kick units.

8 Q That's right.

9 A Yes.

10 Q He is not to buy those advertising
11 spots because of the price, and that is
12 something that you did not become aware of
13 during your conversations with Mr. Allen, is
14 that right?

15 A Correct.

16 Q And that is something that is not
17 reflected in your written direct testimony.

18 A Correct.

19 Q You can put that to one side, Mr.
20 Furman.

21 JUDGE SIPPEL: You're finished
22 with that one?